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10 Sheldon Clark Chaffer
Margaret Diane Chaffer

FILED & ENTERED

MAY 15 2017

CLERK U.S. BANKRUPTCY COURT
Central District of California
BY sandoval DEPUTY CLERK

CHANGES MADE BY COURT

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA – RIVERSIDE DIVISION

In re: Case No.: 6:12-bk-23201-MH

SHELDON CLARK CHAFFER
MARGARET DIANE CHAFFER

Debtors.

Chapter 13

**ORDER GRANTING MOTION FOR ORDER
TO CONTINUE CASE ADMINISTRATION
OF DECEASED DEBTOR'S BANKRUPTCY
ESTATE AND FOR WAIVER OF
CERTIFICATION REQUIREMENTS UNDER
11 U.S.C. § 1328(a) AND (h) AND 11 U.S.C. §
522(q)**

Date: May 11, 2017

Time: 12:30 p.m.

Ctrm: 303

Judge: Hon. Mark D. Houle

The hearing on Debtors' Motion for Order to Continue Case Administration of Deceased Debtor's Bankruptcy Estate and for Waiver of Certification Requirements Under 11 U.S.C. § 1328(a) and (h) and 11 U.S.C. § 522(q) filed on April 11, 2017 [Docket No. 96] (the "Motion") was held on May 11, 2017, at 12:30 p.m. in Courtroom 303 of the above-entitled Court, the Honorable Mark D. Houle presiding. Appearances were as noted on the record.

**ORDER GRANTING MOTION FOR ORDER TO CONTINUE CASE ADMINISTRATION OF DECEASED DEBTOR'S
BANKRUPTCY ESTATE AND FOR WAIVER OF CERTIFICATION REQUIREMENTS UNDER 11 U.S.C. § 1328(A) AND
(H) AND 11 U.S.C. § 522(Q)**

1 The Court having reviewed the Motion and having issued its Tentative Ruling, a true and
2 correct copy of which is attached hereto as Exhibit "1" (Tentative Ruling), and having considered
3 comments from counsel at the hearing, and good cause appearing therefor,

4 **IT IS SO ORDERED THAT** the Motion for Order to Continue Case Administration of
5 Deceased Debtor's Bankruptcy Estate and for Waiver of Certification Requirements Under 11
6 U.S.C. § 1328(a) and (h) and 11 U.S.C. § 522(q) filed on April 11, 2017 is hereby granted to the
7 extent of allowing a qualified individual to complete the § 1328 requirements on behalf of Debtor.
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9 The case administration may continue.

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Date: May 15, 2017



Mark Houle
United States Bankruptcy Judge

ORDER GRANTING MOTION FOR ORDER TO CONTINUE CASE ADMINISTRATION OF DECEASED DEBTOR'S
BANKRUPTCY ESTATE AND FOR WAIVER OF CERTIFICATION REQUIREMENTS UNDER 11 U.S.C. § 1328(A) AND
(H) AND 11 U.S.C. § 522(Q)

EXHIBIT “1”

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Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar

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#6.00 Motion for Order to Continue Case Administration of Deceased Debtor's
Bankruptcy Estate and for Waiver of Certification Requirements

EH__

Docket 96

Tentative Ruling:

5/11/17

BACKGROUND

On May 30, 2012, Sheldon & Margaret Chaffer (collectively, "Debtors", and, individually, "Sheldon" and "Margaret") filed a Chapter 13 voluntary petition. Debtors' Chapter 13 plan was confirmed on August 21, 2012. The plan was modified once, on April 11, 2013.

On April 11, 2017, Margaret filed a motion for order to continue case administration of deceased debtor's bankruptcy estate and for waiver of certification requirements under 11 U.S.C. § 1328(a) and (h) and 11 U.S.C. § 522(q).

DISCUSSION

I. Continue Case Administration

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Fed. R. Bankr. P. Rule 1016 deals with "death or incompetency of debtor" and states, in pertinent part:

If a reorganization, family farmer's debt adjustment, or individual's debt adjustment case is pending under chapter 11, chapter 12, or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred.

"Once the terms are defined and confirmed in a Chapter 13 plan, it might be possible to 'further administer' a bankruptcy case even though the debtor died if there is a source of payments or sufficient payments have been made such that a discharge may be warranted." *In re Waring*, 555 B.R. 754, 765 (Bankr. D. Colo. 2016) (collecting cases). Here, a Chapter 13 plan was confirmed prior to Sheldon's passing, and a source of payments remained – his joint-filer and wife, Margaret. Furthermore, Margaret did make those payments and appears to have maintained this plan to near completion.¹ Not only was further administration possible at the time of Sheldon's passing, further administration successfully occurred.

Furthermore, the Court notes that "[i]n the ordinary course, non-consensual dismissal of a bankruptcy case requires a formal motion, notice, and hearing." *In re Erickson*, 183 B.R. 189, 195 (Bankr. D. Minn. 1995). When, as here, no party filed a motion requesting dismissal, there is no need for a motion to "continue case administration" as that is the default absent a request for dismissal.

II. Waiver of Discharge Requirements

The material relief requested in the motion at issue is a request for certain discharge requirements, outlined in 11 U.S.C. § 1328, to be waived for Sheldon. One court, in considering the applicability of the § 1328 certification requirements to a deceased debtor, stated the following: "The fact that a debtor has died does not necessarily

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preclude entry of a discharge. However, for a discharge to be granted, a debtor must still meet the requirements of 11 U.S.C. § 1328." *In re Bouton*, 2013 WL 5536212 at *1 (Bankr. S.D. Ga. 2013). The Court in *Bouton* avoided the requirements by noting that the instructional course requirement is waived for deceased debtors pursuant to § 109(h)(4), and that domestic support certification requirement imposed by § 1328(a) is only applicable to debtors who do owe domestic support payments.

The request here is materially different from the request in *Bouton*. Debtor requests waiver of two requirements: (1) the domestic support payment certification imposed by § 1328(a); and (2) the felony disclosure requirement imposed by § 1328(h).

Regarding the former, Debtor did owe a domestic support obligation. 11 U.S.C. § 1328(a) states, in pertinent part:

- (a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid . . .

There does appear to be at least one bankruptcy court that specifically addressed the applicability of the § 1328(a) and (h) requirements to a deceased debtor in a jointly filed Chapter 13 case, *In re Levy*, 2014 WL 1323165 (Bankr. N.D. Ohio 2014). Notably, the Court stated the following:

Only two documents now stand between the deceased debtor and a discharge: the certifications regarding DSO obligations and § 1328(h). Since further administration was possible, the question becomes whether there is anything either so personal or unique about the end-of-case requirements to prevent

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either waiver or satisfaction of the requirements by another on behalf [of] a deceased debtor.

Id. at *2. Summarily, the court in *Levy* reached the following conclusion:

Since the § 1328(a) certification appears to fall under the latter category [not altering liability on a debt], the court finds no reason that the DSO certification requirement cannot be undertaken by another in appropriate circumstances. The requirement therefore does not impede "further administration" contemplated under Rule 1016.

Similarly, the court reaches the same conclusion about § 1328(h), albeit along slightly divergent reasoning.

Id. at *3. The Court agrees with the result reached in *Levy*. If the certification requirements imposed by § 1328 (a) & (h) invariably required an action to be taken by the debtor personally, the purpose of Fed. R. Bankr. P. Rule 1016, which permits the continued administration of a Chapter 13 case when appropriate, would be frustrated.

Finally, the *Levy* stated the following:

For the purposes of filing end of the case documents, the court finds that a person with specific knowledge of the deceased debtor's finances may act on behalf of the debtor in completing the § 1328(a) and (h) certifications. To establish knowledge, the person must file an affidavit outlining a sufficient factual foundation in order to establish a fitting record.

Id. at *4. In accordance with *Levy*, the Court will not outright waive a requirement

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imposed by the Bankruptcy Code, but will allow the requirement to be satisfied by an individual with "specific knowledge of the deceased debtor's finances."

TENTATIVE RULING

In accordance with the above, the Court is inclined to GRANT the motion only to the extent of allowing a qualified individual to complete the § 1328 requirements on behalf of Debtor. The Court declines to enter an order continuing case administration, as administration will continue absent a request for dismissal and a subsequent order.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Sheldon Clark Chaffer

Represented By
Jenny L Doling

Joint Debtor(s):

Margaret Diane Chaffer

Represented By
Jenny L Doling

Movant(s):

Margaret Diane Chaffer

Represented By
Jenny L Doling
Jenny L Doling

Sheldon Clark Chaffer

Represented By
Jenny L Doling
Jenny L Doling

Trustee(s):

Amrane (RS) Cohen (TR)

Represented By

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Amrane (RS) Cohen (TR)